

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**UNITED STATES OF
AMERICA,**

Plaintiff,

**5:13-cv-1090
(GLS/TWD)**

v.

**ALL FUNDS LOCATED IN
BANCA POPOLARE
FRIULADRIA ACCOUNT
NUMBER 70451 IN THE NAME
OF SENOL TASKIN,**

Defendant.

SUMMARY ORDER

Pending before the court is the government's unopposed motion to strike the counterclaim filed by claimant Thomas O'Rourke in this civil forfeiture *in rem* action. (Dkt. No. 71.) O'Rourke seeks the imposition of a constructive trust over the property at issue in this action, an order returning the funds to him, and an award of attorneys' fees, costs, and disbursements. (Dkt. No. 63 at 6.) The government argues that O'Rourke's counterclaim must be dismissed, because civil forfeiture actions are actions against the property, not against any claimant, so it is improper for a third-party claimant such as O'Rourke to assert a

counterclaim. (Dkt. No. 71, Attach. 1 at 3-4.) In other words, no claim has been asserted against O'Rourke that would allow him to file a counterclaim. See *United States v. One Lot of U.S. Currency (\$68,000)*, 927 F.2d 30, 34 (1st Cir. 1991); *United States v. \$22,832.00 in U.S. Currency*, No. 1:12 CV 01987, 2013 WL 4012712, at *4 (N.D. Ohio Aug. 6, 2013) (noting that, "because the government has not filed a complaint against the claimants, they are not in the position to file a counterclaim."); *United States v. Assorted Computer Equip.*, No. 03-2356V, 2004 WL 784493, at *2 (W.D. Tenn. Jan. 9, 2004); *United States v. \$10,000 in U.S. Funds*, 863 F. Supp. 812, 816 (S.D. Ill. 1994).

For the reasons articulated in the government's brief and on authority of the cases cited therein, (Dkt. No. 71, Attach. 1 at 3-4), the government's motion is granted and O'Rourke's counterclaim, (Dkt. No. 63 ¶¶ 23-42), is dismissed from this action.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that the government's motion to strike O'Rourke's counterclaim (Dkt. No. 71) is **GRANTED**; and it is further

ORDERED that O'Rourke's counterclaim (Dkt. No. 63 ¶¶ 23-42) is **DISMISSED**; and it is further

ORDERED that the Clerk of the Court provide a copy of this

Summary Order to the parties.

IT IS SO ORDERED.

March 3, 2014
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court